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Decision

Matter of: SCST Engineering

File: B-414601; B-414601.2

Date: July 25, 2017

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DIGEST

Protest challenging the agency’s evaluation of the protester’s qualification statement submitted in a procurement for architect-engineering services is denied where the record shows that the agency’s evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

SCST Engineering of Chicago, Illinois, protests the nonselection of its qualification statement for negotiation of an architect-engineering (A&E) services contract, pursuant to solicitation No. SOL-HQ-14-00022, issued by the Environmental Protection Agency (EPA), for design and engineering services. The protester argues that the agency’s evaluation of its qualification statement was unreasonable.

We deny the protest.

BACKGROUND

The procurement was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1102-1104, and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6, as well as FAR part 16. See Solicitation at 1.¹ The procedures provided for procurements

¹ The solicitation was amended twice. All citations are to the final version as amended.

of A&E requirements under the Brooks Act do not include a price competition. Instead, the agency must select the most highly qualified firm(s), on the basis of demonstrated competence and qualifications, and negotiate contracts with those firms at a fair and reasonable level of compensation. Photo Sci., Inc., B-296391, July 25, 2005, 2005 CPD ¶ 140 at 1-2; see FAR subpart 36.6.

The solicitation, issued on December 9, 2015, requested that offerors submit a Standard Form (SF) 330 Architect-Engineer Qualifications statement for design and engineering services to support Superfund remedial investigation, design, and oversight activities for regions 1 through 10.² Solicitation at 1. The solicitation established geographic coverage areas by contract line item number (CLIN). See id. At issue here is CLIN 2, which includes regions 4 through 7. Id. The solicitation contemplated the award of approximately seven indefinite-delivery, indefinite-quantity (IDIQ) contracts in each CLIN, for a 5-year base period and one 5-year option period. Id. at 2-3. The solicitation reserved three of the anticipated awards under each CLIN for small businesses, pursuant to the Small Business Jobs Act of 2010, 15 U.S.C. § 644, FAR § 19.502-4(a), and 13 C.F.R. § 125.2, if the technical evaluation found SF 330s from three highly qualified small businesses. Id.

The solicitation included the following five technical factors, in descending order of importance: specialized experience and technical competence; past performance; professional qualifications; location in the general geographical areas and knowledge of the locality; and capacity to staff the contract and accomplish the work in the required time. Id. at 5-7. The solicitation stated that an A&E evaluation board (AEEB) would be established to review and rank the qualifications of the offerors based on their SF 330 submissions on a CLIN-by-CLIN basis. Id. at 5. The contracting officer would invite the most highly qualified firms for each CLIN to hold discussions, after which the agency would determine the final rankings of the firms for each CLIN. Id. A request for proposal would be issued to the most highly qualified firms within each CLIN at a later date. Id.

In January 2016, the agency received submissions from 14 firms, including SCST, for CLIN 2. See Agency Report (AR), Tab 6, AEEB Preliminary Selection Report at 15. The AEEB evaluated SCST's submission and ranked it 10th overall, finding SCST to be among the "qualified, but not highly qualified" offerors.³ See id. at 15-17. As relevant here, the AEEB observed that the three offerors that were found to be "qualified" were

² The EPA has 10 regional offices, each of which is responsible for the execution of its programs within several states and territories. About EPA, Regional Offices webpage, <https://www.epa.gov/aboutepa> (last visited July 24, 2017). Regions 4 to 7 include 23 states in the midwest and south. See Solicitation at 2.

³ Offerors that were ranked 1st to 7th were found to be "highly qualified" while offerors that were ranked 8th to 10th were found to be "qualified." See Tab 6, AEEB Preliminary Selection Report at 17.

assigned acceptable ratings⁴ under the most important factor, specialized experience and technical competence. Id. at 16. As a result, the agency viewed the SF 330s of the three “qualified” offerors as “form[ing] a natural third tier in the ranking process.” Id. These offerors were also assessed weaknesses, including significant weaknesses. Id. The AEEB observed that “[i]n particular, SCST . . . received a [m]arginal rating⁵ for [capacity to staff the contract and accomplish the work in the required time factor], and there were several risks⁶ to successful contract performance . . . identified . . . for this particular offeror.”⁷ Id.

The AEEB recommended holding discussions with the seven highly qualified offerors, as well as the two “qualified” offerors, including SCST.⁸ Id. at 17. On December 7, 2016, the agency provided SCST with three general discussion questions that were also provided to all offerors and three specific questions that related specifically to SCST’s submission. See AR, Tab 8, Discussion Letter to SCST at 1. After the offerors, including SCST, responded to the questions, the AEEB ranked the offerors⁹ in the following order:¹⁰

⁴ An acceptable rating was defined as “SF 330 meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses do not outweigh one another or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.” Solicitation at 8.

⁵ A marginal rating was defined as “SF 330 does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The SF 330 has one or more weaknesses which are not outweighed by strengths. Risk of unsuccessful performance is high.” Solicitation at 8.

⁶ Risk was defined as the potential for unsuccessful contract performance. See, e.g., AR, Tab 6, AEEB Preliminary Selection Report at 7. In this regard, “consideration of risk assesses the degree to which an offeror’s approach to achieving the technical factor may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased [g]overnment oversight, and the likelihood of unsuccessful contract performance.” Id.

⁷ As relevant here, the agency assessed risks under the specialized experience and technical competence factor and capacity to staff the contract and accomplish the work in the required time factor. See AR, Tab 7, Appendix 2 to AEEB Preliminary Selection Report at 131, 141.

⁸ The agency states that it held discussions with the two small businesses that were considered “qualified,” but not “highly qualified,” to determine whether either or both of those firms could be found highly qualified. AR, Tab 6, AEEB Preliminary Selection Report at 17.

⁹ Offerors A, F, and I are small businesses; Offeror H was not included in discussions.

		Experience/ Competence	Past Performance	Professional Qualifications	Location/ Knowledge	Staffing/ Timely Completion
1	Offeror A	Outstanding	Substantial Confidence	Outstanding	Outstanding	Outstanding
2	Offeror B	Outstanding	Substantial Confidence	Outstanding	Outstanding	Outstanding
3	Offeror C	Outstanding	Substantial Confidence	Outstanding	Good	Good
4	Offeror D	Outstanding	Substantial Confidence	Outstanding	Good	Good
5	Offeror E	Good	Substantial Confidence	Outstanding	Acceptable	Outstanding
6	Offeror F	Good	Substantial Confidence	Good	Good	Outstanding
7	Offeror G	Good	Substantial Confidence	Acceptable	Good	Outstanding
8	Offeror H	Acceptable	Substantial Confidence	Outstanding	Good	Good
9	Offeror I	Acceptable	Satisfactory Confidence	Good	Good	Marginal
10	SCST	Acceptable	Satisfactory Confidence	Good	Good	Marginal

AR, Tab 14, Final Selection Report at 87.

The AEEB found that the information provided by SCST during discussions confirmed SCST's rating of acceptable for the specialized experience and technical competence factor.¹¹ See AR, Tab 14, AEEB Final Selection Report at 75. For this factor, the solicitation required the offerors to submit 10 example projects that best illustrated the proposed team's qualifications for the contract. See Solicitation, attach. 5, SF 330 Instructions, at 2. As relevant here, five of the 10 project examples submitted by SCST

(...continued)

¹⁰ The technical factors, while listed in descending order of importance, have been abbreviated in the table below.

¹¹ The solicitation stated that the offeror would be evaluated under this factor based on the specialized experience and technical competence necessary to perform all the services listed in the statement of work (SOW). Solicitation at 5-6. The solicitation further advised that the work under the contract would predominately be in site investigation and characterization, multi-media modeling, risk assessment, feasibility studies, treatability studies, design activities, and value engineering; and to a lesser extent oversight of environmental remediation work conducted by other parties. Id. at 6.

were performed by a joint venture firm under a single contract.¹² See AR, Tab 5, SCST's SF 330 at 26-28, 33-34, 39-40, 43-46. While SCST's SF 330 explained that as of August 2015, SCST had assumed the contract in place of one of the two joint venture partners, the agency's evaluation expressed concern that "[a]s the SF 330 was written, it is unclear what staff members SCST provided, or which [] employees are now employed by SCST, as it relates to the execution of the work cited in the SF 330." Id. at 131. The agency also found that because SCST provided no other projects to demonstrate their own specialized experience, "it is hard for the AEEB to understand the prime contractor's corporate experience and connection with the work cited This presents a risk in terms of prime contractor SCST's specialized experience to perform the work anticipated under [the contract]." Id. Accordingly, during discussions, the agency requested that SCST address the specific functions that current SCST staff members performed on each of the five example projects. See AR, Tab 8, SCST Discussion Questions at 4.

SCST provided additional information in response to the discussion questions. See AR, Tab 13, SCST's Responses to Discussion Questions 5-6, at 1-4. The agency found that SCST's response clearly outlined the roles SCST management and staff had executed under the five project examples, and concluded that SCST demonstrated that it possessed the capability to provide in-house project management, quality, health and safety, and some engineering and/or technical staff. See AR, Tab 14, AEEB Final Selection Report at 74-76. However, the agency concluded that SCST's specialized experience centered on providing management and oversight to the contract, as opposed to A&E technical expertise. Id. at 75-76. The agency also found that while SCST demonstrated some technical expertise in certain fields, SCST lacked in-house specialized experience in most A&E areas and that the majority of the technical expertise connected to the projects was not A&E in nature. Id. at 76. Accordingly, while the agency updated its risk assessment to reflect its consideration of SCST's responses, the agency concluded that risk based on SCST's specialized experience still remained. Id.

The agency also viewed the information SCST provided during discussions as supporting SCST's rating of marginal under the evaluation factor, capacity to staff the contract and timely perform the required work. See AR, Tab 14, AEEB Final Selection Report at 77-78. In this regard, the agency assessed risk due to SCST's own limited technical expertise which required that SCST substantially rely on subcontractor resources. AR, Tab 7, Appendix 2 to AEEB Preliminary Selection Report at 141.

During discussions, the agency requested that SCST provide, inter alia, the "number . . . of prime contractor resources that would be available [for this] requirement . . . and

¹² SCST submitted the "Remedial Action Contract (RAC) 2, EPA Region 5" (Region 5 RAC) and four specific projects performed under that contract as its five project examples. See AR, Tab 5, SCST's SF 330 at 26-28, 33-34, 39-40, 43-46; see also AR, Tab 7, Appendix 2 to AEEB Preliminary Selection Report at 128.

please address both management and technical prime resources.” See AR, Tab 8, SCST Discussion Questions at 2. The agency also noted that several of SCST’s key personnel (senior project managers/technical resource consultants) were subcontractor personnel, and asked SCST to discuss how EPA would work with and provide direction to those subcontractors in their roles as senior project managers; and also to address how the project managers as subcontracted personnel would address any performance issues that might arise. Id.

The agency concluded that SCST’s responses did not adequately address the risk identified above. See AR, Tab 14, AEEB Final Selection Report at 77. Instead, the agency found a significant flaw in SCST’s management approach and assessed a significant weakness. Id. More specifically, the agency found that SCST’s response did not demonstrate an adequate approach to manage work in all regions because the response indicated that EPA would need to provide technical direction to the senior project managers, who might be subcontractor employees. Id. at 78. The agency also expressed concern that SCST did not fully understand the relationships between the government, the prime contractor, and the prime’s subcontractors, or the necessary controls that are warranted for subcontracting arrangements. Id.

While, as a result of discussions, SCST’s ratings for the location in the general geographical areas and knowledge of the locality factor improved, the agency found that discussions substantiated SCST’s initial ratings in the remaining factors. AR, Tab 14, AEEB Final Selection Report at 89. As a result, the agency did not consider SCST to be highly qualified and did not recommend that negotiations be commenced with SCST. Id. at 89, 90. On April 7, 2017, SCST was informed that it was not found to be among the most highly qualified firms and therefore was not selected for negotiations. See AR, Tab 15, Final Selection Letter at 1. This protest followed.

DISCUSSION

SCST argues that it should have been found to be among the highly qualified offerors. In this regard, SCST challenges the agency’s evaluation of its submission under two factors: (1) specialized experience and technical competence and (2) capacity to staff the contract and accomplish the work in the required time. As discussed below, we find no basis to sustain SCST’s protest.¹³

Specialized Experience/Technical Competence

First, SCST argues that the agency’s evaluation of its submission under the specialized experience and technical competence factor was unreasonable, and that it should have

¹³ In its various protest submissions, SCST has presented arguments that are in addition to, or variations of, those specifically discussed below. We have considered all of SCST’s arguments and find no basis to sustain its protest.

been assigned a rating of good¹⁴ or higher. See Protester's Comments at 9-16. In this regard, the protester primarily challenges the agency's assessment of risk. Id. at 11-16. Specifically, SCST asserts that it "did not receive credit for its highly qualified and deep technical staff" and, improperly, "only received credit for [its] management and oversight expertise." Id. at 13-14. The protester further argues that the agency's conclusion that SCST lacked specialized experience in most A&E areas was inconsistent with other areas of the agency's evaluation, which the protester contends acknowledged SCST's technical expertise in most, if not all, A&E areas relevant to the performance of CLIN 2. Id. at 14-15.

In response, the agency explains that in order to ascertain SCST's technical role under the project examples SCST submitted, the agency reviewed the relevant project experience for SCST's key personnel and the information SCST provided in response to the agency's discussion question about the specific functions that current SCST staff members performed on each of the five example projects. See 2nd Supplemental (Supp.) AR at 22. The information provided in the SF 330 indicated that of the six key personnel that were SCST employees, only one was proposed for a technical position. Id. at 18; see also 3rd Supp. AR at 5-7. The remainder of the key personnel were proposed for program management or project management positions, and all relevant projects and associated technical capabilities were in management or project management roles, rather than technical roles. Id.

The agency also explains that SCST's response identified staff that performed work generally under the Region 5 RAC as well as under each project. In this regard, while SCST's response identified 40 in-house staff that performed work under the Region 5 RAC, of which 14 were listed under functions that were considered A&E in nature (geologists and project engineers), no information was provided regarding the expertise these individuals possessed as it related to the Region 5 RAC.¹⁵ Id. at 7-9; 2nd Supp. AR at 24. Additionally, of those 14, SCST identified 10 geologists; however none was listed under any specific project. 3rd Supp. AR at 9. Similarly, SCST identified four engineers, only one of whom was listed under any specific projects. Id. The agency also notes that two individuals identified as project managers that respectively possessed a professional geologist and a professional engineer certification were

¹⁴ A good rating was defined as "SF 330 meets requirements and indicates a thorough approach and understanding of the requirements. SF 330 contains strengths which outweigh any weakness. Risk of unsuccessful performance is low." Solicitation at 8.

¹⁵ SCST identified 10 individuals in its management that performed management functions on the Region 5 RAC, and 30 individuals from its environmental division that "performed some role" on the contract. See AR, Tab 13, SCST's Responses to Discussion Questions 5-6, at 2-3. In addition to the geologists and project engineers, six project managers, five environmental scientists, two project chemists, two database managers/ geographic information systems (GIS) staff, and one administrative assistant were identified. Id.

identified as having provided expertise in a geologist role under one project and as an environmental engineer under three projects. Id.

The agency additionally explains that it considered the technical areas in which SCST provided expertise, such as GIS specialists, environmental scientists, and chemists; however, by cross-walking the personnel presented in the discussions and assessing the work performed by the stated personnel under each project, the agency found that many of the technical roles were connected to non-complex, non-A&E work to support field investigation, sample collection, and analytical support.¹⁶ 3rd Supp. AR at 12. Finally, the agency explains that in some instances where it appeared that the staff provided some engineering or scientific expertise, SCST did not provide enough information for the agency to assess whether the work performed was A&E in nature. See id. at 14-16.

As a result, the agency found SCST's A&E technical expertise to be limited to the single geologist and two engineers that were connected to the Region 5 RAC as civil and environmental engineers. The agency further explains that it found the A&E expertise demonstrated by SCST to be limited because SCST demonstrated no experience in other engineering disciplines that would be required under this contract such as chemical, electrical, mechanical, and geotechnical. Id. at 3. Finally, the agency concluded that experts were lacking in several science disciplines such as risk assessors, hydrogeologists, modelers, toxicologist, biologists/ecologist, and sediment experts. Id.

In reviewing protests against an allegedly improper evaluation of firms' qualifications statements for A&E services, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the stated selection criteria and applicable procurement laws; we will not substitute our judgment for that of the agency evaluators. AMEL Techs., Inc., B-412587.2, June 20, 2016, 2016 CPD ¶ 163 at 3; OLBN Architectural Serv., Inc., B-402444.4, B-402444.5, Oct. 4, 2010, 2011 CPD ¶ 55 at 3. The evaluation of experience, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. See J.E. McAmis, B-412321, B-412321.2, Jan. 14, 2016, 2016 CPD ¶ 40 at 9.

On the record here, we find the agency's evaluation unobjectionable. Specifically, the record shows that, based on the information provided by SCST in its SF 330 and its

¹⁶ The agency explains that these activities are not considered to be A&E in nature because data collection and analysis is required for any environmental project and is not specific to A&E environmental work. 3rd Supp AR at 12. By contrast, for A&E work, the agency requires architect and/or engineering specialties in order to have access to complex A&E problem-solving skills and experts that can develop engineering solutions for those complex problems. Id.

response to discussion questions, the agency reasonably concluded that SCST's specialized experience and technical competence, as demonstrated through the project examples it provided on the Region 5 RAC, reflected more management and oversight expertise than A&E technical expertise; that SCST lacked in-house specialized experience in most A&E areas; and that the majority of the technical expertise reflected in the submitted projects was not A&E in nature. While the protester continues to disagree--contending that the agency's evaluation "fails to recognize that it is typical for senior staff and [project managers] . . . to be 'dual hatted' with a technical role," Protester's Comments at 14 n.6; that the execution of management and oversight responsibility requires technical expertise, Id. at n.7; and that field work and field support functions are A&E in nature, Protester's 3rd Supp. Comments at 22-26--SCST has not shown that the agency's conclusions were unreasonable.

In this regard, an A&E firm has the responsibility to submit a well-written qualification statement, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements, allows a meaningful review by the procuring agency, and contains all the information that was requested or necessary to demonstrate its capabilities in response to the solicitation. See Reid Planning, Inc., B-412942, July 8, 2016, 2016 CPD ¶ 202 at 6-7; Electronic Interiors Inc., B-405576, Nov. 18, 2011, 2011 CPD ¶ 267 at 3. On this basis, we view the protester's arguments as reflecting nothing more than disagreement with the agency's assessments of SCST's qualification statement. Design Eng'g, Inc., B-408336.3, May 6, 2014, 2014 CPD ¶ 144 at 3.

Staffing/Timely Completion

Next, the protester argues that the agency's evaluation of its submission under the capacity to staff the contract and timely perform the required work factor, was unreasonable.¹⁷ See Protester's Comments at 16-24. The protester first asserts that the agency unreasonably penalized SCST for failing to address a risk that was identified in the AEEB's preliminary selection report because the agency did not ask questions during discussions that would have elicited a responsive answer. Id. at 20-21. In this regard, the protester specifically argues that the agency "asked nothing about SCST's in-house technical resources or, more specifically, the proportion of technical resources employed directly by SCST and employed by its subcontractor team." Id.

The agency responds that FAR Part 36 procurements are exempt from the requirement for meaningful discussions, as defined by FAR Part 15. See Supp. AR at 13 (citing ARTEL, Inc., B-248478, Aug. 21, 1992, 92-2 CPD ¶ 120). Nonetheless, the agency explains that it asked SCST to respond to several questions that captured the

¹⁷ Under this factor the offeror's ability to implement a quality system, i.e., management processes and procedures, and capacity to staff the contract in a manner that ensures effective and timely completion would be evaluated. Solicitation at 7. The solicitation also stated that the breadth and depth of the technical disciplines and areas of expertise contained within the proposed team would be evaluated. Id.

substance of the agency's concern, i.e., whether SCST had the in-house technical capabilities to successfully perform this requirement. Id. at 13-15. SCST's argument provides no basis to sustain the protest where the record shows that the agency specifically requested that SCST identify the "number . . . of prime contractor resources that would be available . . . and please address both management and technical prime resources." See AR, Tab 8, SCST Discussion Questions at 3.

The protester also maintains that the agency improperly assessed a significant weakness following discussions, based on the agency's unreasonable conclusion that the EPA would be responsible for providing technical direction to SCST's subcontractor team members. Protester's Comments at 23-24.

In response, the agency explains that it assessed a significant weakness under this factor because SCST failed to demonstrate that its management approach was adequate. See Supp. AR at 9-10. In this regard, the agency references SCST's response to the agency's discussion question regarding how EPA would work with and provide direction to subcontractor employees in their roles as senior project managers (key personnel), noting that the agency specifically instructed SCST to address how the project managers would address any performance issues that arose. Id. SCST responded that it expected that "the EPA . . . will provide project-specific direction to our identified Project Manager."¹⁸ Id. (citing AR, Tab 13, SCST's Responses to Discussions Questions 5-6, at 5-6). The agency found SCST's response troubling because, "[b]y requiring EPA to provide technical direction (or really any type of direction) to SCST's subcontractors, SCST is not only abdicating its prime contractor responsibilities but also asking EPA to assume a management approach that is potentially fraught with problems." Id. at 9.

On this record, we find the agency's evaluation unobjectionable. An A&E firm has the responsibility to submit a well-written qualification statement, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements, allows a meaningful review by the procuring agency, and contains all the information that was requested or necessary to demonstrate its capabilities in response to the solicitation. See Reid Planning, Inc., supra; Electronic Interiors Inc., supra. While the protester may disagree with the agency's assessment, the protester's arguments do not provide a basis to sustain a protest.

The protest is denied.

Susan A. Poling
General Counsel

¹⁸ SCST asserts that the term "project-specific direction" referred to the "day-to-day, peer-to-peer communication between EPA personnel and the [project managers] employed by the subcontractor team members." Protester's Comments at 24.